FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5800 OF 2005

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	: Coram, : : : :	Court's or Judge's Orders .

Mr. S. G. Kudale for petitioner

CORAM: SMT. RANJANA DESAI, J.
8/9/2005

P.C.:-

The petitioners are plaintiffs in Long Cause Suit No. 2170 of 2001. This suit is filed against respondent 1 Maharashtra Housing & Area Development Authority ("MHADA" for short). In the suit a declaration is sought that the defendants are not entitled to carry out repairs to the suit premises namely Majestic Mansion, situate and lying at 380-388, S.V.P Road, Mumbai 400 004 without the consent of the plaintiffs and without complying with the provisions of Section 89(1) and (5) of the MHADA Act.

2. In this suit a chamber summons was filed by respondents 2 to 10 praying that they may be impleaded as parties to the suit. The said chamber summons was granted by the impugned order. Another chamber summons was taken out by the petitioners-plaintiffs seeking inspection of documents. By the impugned order a direction was given to respondent 1 to furnish certain documents to the plaintiffs.

3. I have heard at some length Mr. Kudale, learned advocate for the petitioner. Mr. Kudale contended that respondents 2 to 10 are neither necessary parties nor proper parties and their presence is not necessary for the proper adjudication of the issues involved in the suit. He submitted that the petitioner has filed suit against the said respondents for eviction on the ground that they have carried out unauthorised construction. He

submitted that the said respondents want to get themselves impleaded in the present suit just to get their unauthorised construction regularised and hence their chamber summons was wrongly allowed. The learned counsel further contended that respondents 2 to 10's counsel was not even present when the order was passed.

4. He drew my attention to ground (b) of the writ petition wherein it is stated that in the morning session also the advocate of the said respondents was not present and the court had expressed that it would dismiss the chamber summons. However, in the afternoon session in the absence of counsel for the respondents the learned Judge granted the chamber summons.

5. I have carefully perused the affidavit filed by Mr. Mahendra Zaveri, respondent 9. Having gone through the said affidavit which is filed in support of the chamber summons, I am of the opinion that the

learned judge cannot be faulted for having impleaded the said respondents as party to the suit. According to the said respondents the B-wing of the building where they are staying is in a dilapidated condition and that serious mishap may occur if its repair work is stopped. Since the petitioners-plaintiffs are praying for a declaration that the defendants are not entitled to carry out repairs, it is only proper that the said respondents are made party to the suit.

6. Assuming that the said respondents' counsel was not present when the order was passed, in my opinion, that would not vitiate the order because the presence of the said respondents is necessary for the proper adjudication of the issues involed in the suit.

7. So far as the direction by the trial court to MHADA is concerned, MHADA must abide by the said direction. In case of non-compliance

of the said order the petitioners would be entitled to take such steps as they may be advised.

In the circumstances, the petition is rejected.